

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-16237
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 9, 2006 THOMAS K. KAHN CLERK
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D. C. Docket No. 04-02797-CV-T-24TBM
BKCY No. 96-00805

In Re: Optical Technologies, Inc.,
a.k.a. Bell Atlantic Capita Corp.,
d.b.a. Lewisport Pharmacy,
d.b.a. Broadway Clinic Pharmacy,

Debtor.

FINOVA CAPITAL CORPORATION,

Plaintiff-Appellee,

versus

FLMI, INC.,
d.b.a. Kurtz Pharmacy,
FRANK BYERLY,

Defendants-Appellants.

Appeal from the United States District Court
for the Middle District of Florida

(May 9, 2006)

Before DUBINA, HULL and WILSON, Circuit Judges.

PER CURIAM:

Appellants, Frank Byerly and FLMI, Inc., appeal from an order of the district court reversing a final judgment of the bankruptcy court. The bankruptcy court found that Byerly and FLMI are not creditors of Recomm International Display, Ltd. (“Recomm”), the debtor, and therefore cannot be bound by the Confirmed Plan of Reorganization and the Confirmation Order. The district court disagreed, finding that FLMI potentially had two claims against Recomm: (1) fraud, and (2) breach of contract.

After carefully reviewing the record on appeal and reading the parties’ briefs, we conclude that Byerly and FLMI were not creditors of Recomm because they did not have a “claim” as that term is defined in 11 U.S.C. § 101(5). The appellants have never sought any claim against Recomm, in state or federal court, and have never filed a proof of claim with Recomm. The bankruptcy court’s finding that the appellants returned the leased equipment and deemed Recomm’s debt satisfied before Recomm filed for bankruptcy are not clearly erroneous. Therefore, we reverse the district court’s order dated September 30, 2005.

REVERSED.